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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-373

No. COA21-449

Filed 17 May 2022

Halifax County, No. 96 CRS 11350, 96 CRS 11376, 96 CRS 11377, 96 CRS 11379, 97 CRS 380, 98 CRS 7849

STATE OF NORTH CAROLINA

v.

CRAIG MCKEE WILLIAMS, Defendant.

Appeal by defendant from order entered 7 January 2021 by Judge Jeffery B. Foster in Halifax County Superior Court. Heard in the Court of Appeals 25 January 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Zachary K. Dunn, for State-appellee.

Dobson Law Firm, PLLC, by Jeffrey Dobson, and Vernon Law Firm, P.A., by John Moss, for defendant-appellant.

GORE, Judge.

¶ 1 Defendant Craig McKee Williams contends that the trial court erred in determining that his Motion for Appropriate Relief ("MAR") was procedurally barred. We agree with the trial court, and thus, affirm.

I. Background

¶ 2 On 10 September 1998, defendant pled guilty pursuant to a plea agreement to conspiracy to commit first-degree murder, robbery with a dangerous weapon, conspiracy to commit armed robbery with a dangerous weapon, felonious breaking or entering, felonious larceny, felonious possession of stolen goods, and conspiracy to commit felonious breaking or entering and larceny. The trial court entered judgment against defendant on 7 June 1999. As part of his plea agreement, defendant was to testify at his co-defendants' trials. At sentencing the trial court determined that five aggravating factors applied to defendant's case and defendant was sentenced in the aggravated range for all charges.

¶ 3 Following judgment, and before the present matter, defendant filed two MARs. Both of defendant's prior MARs were denied. Defendant filed the MAR subject to this appeal on 6 July 2020. The present MAR presents three issues for review: defendant's request to withdraw his guilty plea; notice of aggravating factors against him prior to sentencing and the reliance on evidence from a co-defendant's trial at sentencing; and ineffective assistance of counsel, prior to, during sentencing, and in seeking post-conviction relief. Defendant's motion was heard on 18 November 2020. On 4 January 2021, the trial court entered an order where the court found that defendant filed two previous MARs, and the arguments presented in the present MAR were either heard and ruled on by the court in the previous MARs, or defendant, having full knowledge of the issue, failed to raise it in those prior motions. Thus, the trial court concluded

these arguments are procedurally barred. The trial court further found that the only issue not addressed by the previous MARs was the ineffective assistance of appellate counsel claim. The trial court concluded that appellate counsel's performance did not fall below an objective standard of reasonableness. Thus, the trial court denied defendant's MAR.

¶ 4 The record on appeal does not include a notice of appeal from defendant. However, on 5 April 2021, defendant filed a Petition for Writ of Certiorari with this Court. This Court allowed defendant's petition, by order filed 4 May 2021, for the purpose of reviewing the trial court's denial of defendant's MAR.

II. Discussion

¶ 5 "A trial 'court's ruling on a motion for appropriate relief pursuant to [N.C. Gen. Stat. §] 15A-1415 is subject to review . . . [i]f the time for appeal has expired and no appeal is pending, by writ of certiorari.'" *State v. Morgan*, 118 N.C. App. 461, 463, 455 S.E.2d 490, 491 (1995) (quoting N.C. Gen. Stat. § 15A-1422(c)(3) (1988)). "When considering rulings on motions for appropriate relief, we review the trial court's order to determine 'whether the findings of fact are supported by evidence, whether the findings of fact support the conclusions of law, and whether the conclusions of law support the order entered by the trial court.'" *State v. Frogge*, 359 N.C. 228, 240, 607 S.E.2d 627, 634 (2005) (quoting *State v. Stevens*, 305 N.C. 712, 720, 291 S.E.2d 585, 591 (1982)). "Findings of fact 'made by the trial court pursuant to hearings on motions

for appropriate relief' are binding on appeal if they are supported by competent evidence." *State v. Morganherring*, 350 N.C. 701, 714, 517 S.E.2d 622, 630 (1999) (quoting *State v. Stevens*, 305 N.C. 712, 720, 291 S.E.2d 585, 591 (1982)). "When a trial court's findings on a motion for appropriate relief are reviewed, these findings are binding if they are supported by competent evidence and may be disturbed only upon a showing of manifest abuse of discretion. However, the trial court's conclusions are fully reviewable on appeal." *State v. Lutz*, 177 N.C. App. 140, 142, 628 S.E.2d 34, 35 (2006) (citation and quotations omitted).

¶ 6 Defendant argues that the trial court erred in concluding his petition was procedurally barred because the trial court failed to determine that defendant showed good cause and demonstrated actual prejudice, and because the trial court did not find there was a fundamental miscarriage of justice.

¶ 7 Section 15A-1419 provides when an MAR may be denied:

> (a) The following are grounds for the denial of a motion for appropriate relief, including motions filed in capital cases:
>
> (1) Upon a previous motion made pursuant to this Article, the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so. . . .
>
> (2) The ground or issue underlying the motion was previously determined on the merits upon an appeal from the judgment or upon a previous motion or proceeding in the courts of this State or a federal court . . . .

(b) The court shall deny the motion under any of the circumstances specified in this section, unless the defendant can demonstrate:

> (1) Good cause for excusing the grounds for denial listed in subsection (a) of this section and can demonstrate actual prejudice resulting from the defendant's claim; or
>
> (2) That failure to consider the defendant's claim will result in a fundamental miscarriage of justice.

(c) For the purposes of subsection (b) of this section, good cause may only be shown if the defendant establishes by a preponderance of the evidence that his failure to raise the claim or file a timely motion was:

> (1) The result of State action in violation of the United States Constitution or the North Carolina Constitution including ineffective assistance of trial or appellate counsel;
>
> (2) The result of the recognition of a new federal or State right which is retroactively applicable; or
>
> (3) Based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim on a previous State or federal postconviction review.
>
> A trial attorney's ignorance of a claim, inadvertence, or tactical decision to withhold a claim may not constitute good cause, nor may a claim of ineffective assistance of prior postconviction counsel constitute good cause.

(d) For the purposes of subsection (b) of this section, actual prejudice may only be shown if the defendant establishes by a preponderance of the evidence that an error during the trial or sentencing worked to the defendant's actual and substantial disadvantage, raising a reasonable probability,

> viewing the record as a whole, that a different result would have occurred but for the error.
>
> (e) For the purposes of subsection (b) of this section, a fundamental miscarriage of justice only results if:
>
> > (1) The defendant establishes that more likely than not, but for the error, no reasonable fact finder would have found the defendant guilty of the underlying offense . . . .

N.C. Gen. Stat. § 15A-1419 (2021).

¶ 8 In the case *sub judice*, each claim defendant raised in his MAR was raised in previous MARs or he had the opportunity to raise such claims in a previous MAR, except for his claim of ineffective assistance of appellate counsel. Thus, for these claims to be heard defendant would have to show good cause and actual prejudice or a fundamental miscarriage of justice under § 15A-1419(b).

A. Good Cause and Actual Prejudice

¶ 9 Defendant argues that the fact that the State presented five aggravating factors to the trial court during sentencing and supported those aggravating factors by evidence from a co-defendant's trial constituted actual prejudice. However, defendant fails to allege good cause in that his failure to raise a claim or file a timely motion was the result of unconstitutional state action, the result of a new state or federal right, or based on new facts, as required by N.C. Gen. Stat. § 15A-1419(c). Under N.C. Gen. Stat. § 15A-1419(b)(1) to hear claims otherwise procedurally barred defendant must demonstrate good cause *and* actual prejudice. Therefore, defendant's

actual prejudice arguments alone are not sufficient to overcome the procedural bar in N.C. Gen. Stat. § 15A-1419(a).

¶ 10 There are no new facts presented and defendant's failure to raise such claims in his previous motions does not appear to be the result of any unconstitutional state action. Thus, defendant's only avenue to demonstrate good cause would be through reliance on a new federal or state right which is retroactively applicable. N.C. Gen. Stat. § 15A-1419(c)(2). Here, the only new right which may fall within the purview of § 15A-1419(c)(2) would be the "Blakely Bill," 2005 N.C. Sess. Laws 145. The portion of the "Blakely Bill" which may be applicable to defendant's case pertains to the application of aggravating factors at sentencing and is codified at N.C. Gen. Stat. § 15A-1340.16. However, this bill is not retroactively applicable, and thus, cannot be relied upon by defendant to demonstrate good cause.

¶ 11 Thus, because defendant has not and cannot show good cause, it is immaterial whether he can demonstrate actual prejudice. As a result, defendant cannot rely on § 15A-1419(b)(1) to overcome the procedural bar found in § 15A-1419(a).

B. Fundamental Miscarriage of Justice

¶ 12 The statute is clear that only two instances constitute a fundamental miscarriage of justice which may overcome the § 15A-1419 procedural bar. One of these instances only applies if the defendant has been sentenced to the death penalty, which is not applicable in the present matter. Thus, in the case *sub judice*, defendant

may only rely on § 15A-1419(e)(1) to show a fundamental miscarriage of justice. This subsection provides that a fundamental miscarriage of justice only results if "[t]he defendant establishes that more likely than not, but for the error, no reasonable fact finder would have found the defendant guilty of the underlying offense." N.C. Gen. Stat. § 15A-1419(e)(1). Defendant argues that the introduction of evidence from a co-defendant's trial at defendant's sentencing resulted in a fundamental miscarriage of justice. We disagree.

¶ 13 The plain language of § 15A-1419(e)(1) clearly applies to the guilt determination phase of a criminal proceeding. "The goal of statutory interpretation is to determine the meaning that the legislature intended upon the statute's enactment." *State v. Rankin*, 371 N.C. 885, 889, 821 S.E.2d 787, 792 (2018) (citation omitted).

> The intent of the General Assembly may be found first from the plain language of the statute, then from the legislative history, the spirit of the act and what the act seeks to accomplish. The court will not adopt an interpretation which results in injustice when the statute may reasonably be otherwise consistently construed with the intent of the act. . . .

Id. (cleaned up). "When the General Assembly uses an unambiguous word without providing an explicit statutory definition, that word will be accorded its plain meaning." *Id.* (cleaned up).

¶ 14 Section 15A-1419(e)(1) allows for a determination that there was a fundamental miscarriage of justice if, but for the alleged error, "no reasonable fact finder would have found the defendant *guilty of the underlying offense*." N.C. Gen. Stat. § 15A-1419(e)(1) (emphasis added). A defendant has already been found guilty of the underlying offense at the time of sentencing, and the determination of the presence of aggravating or mitigating factors. Thus, an alleged error at sentencing definitionally cannot result in no reasonable fact finder finding the defendant guilty of the underlying offense and cannot be the basis for a finding of a fundamental miscarriage of justice under § 15A-1419(e)(1).

¶ 15 As a result, defendant has not and cannot demonstrate a fundamental miscarriage of justice to overcome the procedural bar found in § 15A-1419.

C. Ineffective Assistance of Appellate Counsel

¶ 16 Defendant's only claim that was not procedurally barred by § 15A-1419 was his claim for ineffective assistance of appellate counsel. However, on appeal, defendant has not presented any arguments pertaining to this claim. Thus, this issue is deemed abandoned on appeal. N.C.R. App. P. 28(b)(6) (2020).

III. Conclusion

¶ 17 For the foregoing reasons, we affirm the trial court's order denying defendant's motion.

AFFIRMED.

Judges COLLINS and JACKSON concur.

Report per Rule 30(e).